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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR EXTENSION OF TIME TO PERFECT)	
BENEFICIAL WATER USE PERMIT)	FINAL ORDER
NO. 24875-g41H GRANTED TO)	
CITY OF BELGRADE)	

* * * * *

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the March 14, 1989 Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

ORDER


That Application for Extension of Time to Perfect Beneficial Water Use Permit No. 24875-g41H by the City of Belgrade is hereby granted. The diversion and distribution works shall be completed, and the water shall be applied to beneficial use as specified in the Permit no later than November 30, 1989. The Notice of Completion of Water Development, Form 617, shall be filed on or before November 30, 1989.

CASE # 24875

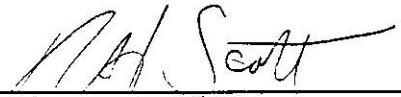
NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

Dated this 11 day of April, 1989.



Gary Fritz, Administrator
Department of Natural
Resources and Conservation
Water Resources Division
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6605



Robert H. Scott, Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6625

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record at their address or addresses this 13th day of April, 1989, as follows:

Mark Bordsen
City Manager
City of Belgrade
P.O. Box 268
Belgrade, Montana 59714

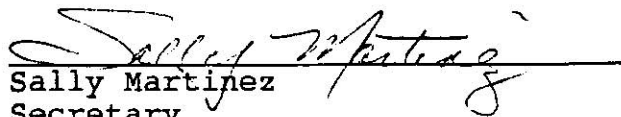
Marvin W. and Norma Pretz
Star Mobile Home Park
Space #45
Belgrade, Montana 59714

John and Ardyce DeVries
540 Alaska Frontage Road
Belgrade, Montana 59714

Scott Compton, Field Manager
Bozeman Field Office
Department of Natural
Resource and Conservation
1201 East Main
Bozeman, Montana 59715

Earl V. Gilbert
310 Alaska Frontage Road
Belgrade, Montana 59714

William A. Schreiber
P.O. Box 1020
Belgrade, Montana 59714



Sally Martinez
Secretary

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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR EXTENSION OF TIME TO PERFECT)	
BENEFICIAL WATER USE PERMIT NO.)	PROPOSAL FOR DECISION
24875-g41H GRANTED TO)	
CITY OF BELGRADE)	

* * * * *

Pursuant to the Montana Water Use Act and the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on January 24, 1989 in Belgrade, Montana. Applicant for extension, City of Belgrade (hereafter, also referred to as "Belgrade" or "Applicant"), was represented by William A. Schreiber, attorney at law. Mr. Schreiber also appeared as a witness for the Applicant. Doug Daniels, City Engineer for the City of Belgrade, and Henry Hathaway, City Superintendent for the City of Belgrade, also appeared as witnesses for the Applicant.

Objector John and Ardyce DeVries appeared by and through said Ardyce DeVries. Objector Earl V. Gilbert appeared pro se.

Scott Compton and Jan Mack, both with the Bozeman Field Office of the Department of Natural Resources and Conservation (hereafter, "Department" or "DNRC") Water Rights Bureau, were present at the hearing.

CASE # 24875

EXHIBITS

Applicant offered one exhibit for inclusion in the record.

Applicant's Exhibit 1, an affidavit by the Belgrade City Clerk certifying that the Belgrade City Council Minutes (52 pages) which are appended to said affidavit are true and correct, was admitted without objection.

Objector DeVries offered one exhibit.

Objector DeVries Exhibit 1, consisting of two copies of the public notice of the initial Application for the above-captioned Permit, a copy of the DeVries' objection to said Application (two pages), a copy of the objection of Foreign Car Service to said Application (two pages), a copy of a letter dated September 22, 1982 to DeVries from Scott Compton, a copy of a Notice and Statement of Opinion by Scott Compton dated December 9, 1981, and a copy of an Agreement between the City of Belgrade and the DeVries (two pages), was admitted without objection.

Objector Gilbert offered one exhibit.

Objector Gilbert Exhibit 1, consisting of a copy of an Agreement between the City of Belgrade and R. Kenneth Richardson and Pauline M. Richardson, husband and wife (two pages), a copy of a Certificate of Water Right in the name of R. Kenneth Richardson and Pauline Richardson, a copy of a well log by Potts Drilling Co. for a well finished August 10, 1974, a copy of a letter dated January 19, 1988 from Douglas E. Daniels to Earl Gilbert, and a copy of a document entitled "Aquifer Test Data" dated January 12, 1988, was admitted without objection.

FINDINGS OF FACT

1. Section 85-2-312(3), MCA, states in relevant part:

The department may, upon a showing of good cause, extend time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. All requests for extensions of time must be by affidavit and must be filed with the department prior to the expiration of the time limit specified in the permit or any previously authorized extension of time. The department may issue an order temporarily extending the time limit specified in the permit for 120 days or until the department has completed its action under this section, whichever is greater. Upon receipt of a proper request for extension of time, the department shall prepare a notice containing the facts pertinent to the request for extension of time and shall publish the notice in a newspaper of general circulation in the area of the source. The department may serve notice by first-class mail upon any public agency or other person the department determines may be interested in or affected by the request for extension of time. The department shall hold a hearing on the request for extension of time on its own motion or if requested by an interested party. . . .

2. On November 8, 1982, Provisional Permit to Appropriate Water No. 24875-G41H was granted to the City of Belgrade with a priority date of October 22, 1979. Belgrade was required under the terms of the Permit to perfect the permitted appropriation, i.e., to have completed the appropriation works, and have applied water to beneficial use as specified in the Permit, on or before May 1, 1985.

3. On May 5, 1985, Belgrade requested more time to perfect the Permit, stating that Belgrade was involved in litigation with a contractor regarding the contractor's allegedly faulty construction of a portion of the appropriation works (the well). On May 13, 1985, Belgrade was granted an Extension of Time to perfect the appropriation. Under the Extension, Belgrade was to have perfected the appropriation on or before December 1, 1986.

4. On October 23, 1986, Belgrade requested a second extension, stating that the district court had just "made a direction on this case". On October 28, 1986, Belgrade was granted a second Extension of Time to perfect the appropriation. Under this Extension, Belgrade was to have perfected the appropriation on or before November 30, 1988.

5. On October 25, 1988, Belgrade requested a third extension stating that "delays are due to design of plans and specifications for the modification to the existing well, the development of plans, specifications, and approval from Department of Health and Environmental Sciences". A temporary extension was subsequently granted on October 27, 1988, and the pertinent portions of this Application for Extension of Time were published in the Bozeman Daily Chronicle, a newspaper of general circulation in the area of the source, on November 30, 1988.

6. The Application received timely objections from Star Mobile Home Park, John and Ardyce DeVries, and Earl V. Gilbert, each alleging that the City of Belgrade had not diligently pursued perfection of the appropriation.

7. Since the grant of the second extension, Belgrade has accomplished the following:

On March 17, 1987, Belgrade contracted with an engineer for plans to repair the faulty well. On May 4, 1987, the Belgrade City Council decided on which of the engineer's plans it would adopt. Subsequently, bids for implementation of the adopted plan were let and, in November, 1987, a bid was accepted. Repairs were completed in February of 1988. In March, 1988, the well was "TV inspected" and found to be in good condition. In June, 1988, plans for the pump house and pump were approved by the City Council. In July, 1988, bids were let on construction of said pump house and pump installation. On November 7, 1988, a contract was awarded for the construction of the pump house and pump installation.

8. Construction of the pump house is set to commence after spring thaw in 1989, and the appropriation works are expected to be operational and on-line with the city water system by June 1, 1989. Thereupon, Belgrade will require time to apply water to the beneficial use stated in the Permit.

9. Objectors did not dispute that the above-said work had been done; the substance of their testimony and evidence rather being directed at the inadequacy of the agreements they or their predecessors had entered into with the City of Belgrade, in light of the development which had taken place in the area since the initial grant of this Permit.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and the parties hereto.

2. The Department gave proper notice of the hearing and, all relevant substantive and procedural requirements of law or rule appearing fulfilled, the matter is properly before the Examiner.

3. In order to receive an extension hereunder, the Applicant for extension must show that it has been reasonably diligent in its efforts to perfect the appropriation. See In the Matter of the Application for Extension of Time to Perfect Beneficial Water Use Permit No. 39787-s76M Transferred to Marvin and Mary Ann Rehbein, Proposal for Decision, pp. 5-9 (Final Order, January 24, 1989).

4. The grant of a previous extension is *prima facie* evidence of reasonable diligence on the part of the Applicant prior to that extension. No contraindicative evidence has been presented; therefore, the Examiner concludes that prior to October 26, 1986, Applicant exercised reasonable diligence.

5. The uncontested evidence presented by the Applicant shows that it exercised reasonable diligence toward perfection between October 26, 1986 and the date of the present Application

for Extension. (Finding of Fact 7.)¹ Accordingly, and because the evidence also shows that Applicant will need another year to perfect the Permit, there is good cause to issue the extension, as requested.

WHEREFORE, the Examiner propounds the following:

PROPOSED ORDER

That Application for Extension of Time to Perfect Beneficial Water Use Permit No. 24875-g41H by the City of Belgrade is hereby granted. The diversion and distribution works shall be completed, and the water shall be applied to beneficial use as specified in the Permit no later than November 30, 1989. The Notice of Completion of Water Development, Form 617, shall be filed on or before November 30, 1989.

NOTICE

This proposal is a recommendation, not a final decision. All parties are urged to review carefully the terms of the proposed order, including the legal land descriptions. Any party adversely affected by the Proposal for Decision may file exceptions thereto with the Examiner (1520 East 6th Avenue, Helena,

¹ In this proceeding, the Department may grant an extension of time to perfect a Permit for good cause shown (Applicant's reasonable diligence), or deny the extension. It does not have jurisdiction hereunder to reconsider the initial issuance of the Permit, or to alter the terms of the Permit in light of recently acquired information. Therefore, evidence presented by the Objectors hereto pertaining to alleged adverse effects which may be occasioned by the exercise of the Permit as it presently exists, but not relevant to the issue of reasonable diligence, cannot be considered herein.

Montana 59620-2301); the exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Section 2-4-623, MCA. Parties may file responses to any exception filed by another party within 20 days after service of the exception.

Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, the reason for the exception, and authorities upon which the exception relies. No final decision shall be made until after the expiration of the time period for filing exceptions, and the due consideration of any exceptions which have been timely filed.

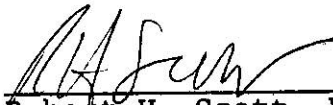
Any adversely affected party has the right to present briefs and oral arguments pertaining to its exceptions before the Water Resources Division Administrator. A request for oral argument must be made in writing and be filed with the Examiner within 20 days after service of the proposal upon the party. Section 2-4-621(1), MCA. Written requests for an oral argument must specifically set forth the party's exceptions to the proposed decision.

Oral arguments held pursuant to such a request normally will be scheduled for the locale where the contested case hearing in this matter was held. However, the party asking for oral argument may request a different location at the time the exception is filed.

Parties who attend oral argument are not entitled to introduce new evidence, give additional testimony, offer additional exhibits, or introduce new witnesses. Rather, the parties will

be limited to discussion of the evidence which already is present in the record. Oral argument will be restricted to those issues which the parties have set forth in their written request for oral argument.

Dated this 14 day of March, 1989.


Robert H. Scott, Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6625

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record at their address or addresses this 15th day of March, 1989, as follows:

Mark Bordsen
City Manager
City of Belgrade
P.O. Box 268
Belgrade, Montana 59714

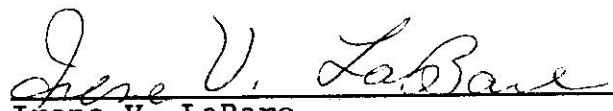
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P.O. Box 1020
Belgrade, Montana 59714


Irene V. LaBare
Legal Secretary